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THE DISTRIBUTION OF THE BINDING PORTION OF THE CONSIDERATION FOR A TRANSFER OF JOINT FAMILY PROPERTY BY THE MANAGER, *i.e.*, WHEN THE TRANSFER IS SET ASIDE IN PART.

Three views are possible as to the mode of distribution. Of them, two are extremes; and the third view is the golden mean.

The view most favourable to the alienee is that the non-binding portion of the consideration should be wholly ascribed to the alienor's share, and the binding portion should be wholly ascribed to the challenging coparcener's share. Some analogy thereto may be found in section 60 of the Contract Act (regarding appropriation).

The view most in favour of the challenging coparcener is the precise reverse of the view most favourable to the alienee. The challenging coparcener's interest is to maintain that the non-binding portion of the consideration should be wholly ascribed to his own share, and that the binding portion should be wholly ascribed to the alienor's share, so that he (the challenger) might altogether escape payment of his share of the family burdens.

The third view which is the happy mean between the two opposite extremes noticed above, is this: The valid portion of the consideration as well as the invalid portion must be distributed over the shares of each and every one of the coparceners including the alienor. This was laid down in *Vadivelam Pillai* v. *Natesam Pillai*[1], and has been acted upon in *Seetharam Naidu* v. *Balakrishna Naidu*[2], *Muthukrishna Naidu* v. *Muthu*

1 (1912) I.L.R. 37 M. 435 at 437· 23 M.L.J. 256.
2 (1913) 26 M.L.J. 604 at 611.

krishnappa Naidu[3] and *Adinarayana Reddi* v. *Subbarayal Reddi*[4]; and it may be assimilated to the equitable principles embodied in the Transfer of Property Act, sections 82, 37, 45, 46 and 47 and the Contract Act, section 61, clause (2). But for the decisions in *Marappa Gaundan* v. *Rangaswami Gaundan*[5] and *Venkatapathi Nayakar* v. *Pappia Nayakar*[6], which sound a different note, further discussion would be unnecessary, and the matter would be *stare decisis*. No differentiation can be made for the present purpose between sales and mortgages except in one respect.

If the purchaser has acted in good faith and after due enquiry, and is able to show that the sale itself was justified by legal necessity, he is under no obligation to enquire into the application of the surplus, and is, therefore, not bound to make repayment of such surplus to the coparcener challenging the sale (*Sri Krishn Das* v. *Nathu Ram*[7] and *Ram Sunder Lal* v. *Lachmi Narain*[8].) It is not always possible for the manager to sell just that fraction of the property which will bring in the precise sum required to clear the binding debts. But unlike sales, mortgages can more easily be arranged for any required sum, though of course the manager has a fair discretionary power to decide if the required sum should be raised by mortgage or by sale: *Niamat Rai* v. *Din Dayal*.[9]

Where the purchaser (*Z*) fails to prove that the sale as a whole was justified by legal necessity, the sale cannot bind the share of the challenging coparcener (*Y*) and the question would arise how the binding portion of the consideration is to be distributed over his share and that of the alienor (*X*). Let us take it for the purpose of an illustration that Rs. 1,000 was the fair price of the property and was actually paid by *Z* to *X*, but only Rs. 500 thereof was for a binding purpose. *Vadivelam Pillai* v. *Natesam Pillai*[1] is clear authority for the proposition that not only is the sale of *X's* share to be upheld, but *Y's* share also is to be burdened with a charge for Rs. 250.

If the assets of the family were worth Rs. 1,000 and the liabilities of the family amounted to Rs. 500 *Y* would on

1. (1912) I.L.R. 37 M 435 at 437: 23 M.L.J. 256.
3. (1917) M.W.N. 273.
4 A.I.R. 1927 M. 1116 at 1117.
5. (1899) I.L.R. 23 M 89
6 (1928) I.L.R. 51 M. 824 · 55 M.L.J. 489
7. (1926) L.R. 54 I.A. 79 · I L R 49 A. 149. 52 M. L J. 720 (P.C.).
8. (1929) I L.R. 51 A. 430 · 57 M.L.J. 7 (P.C.).
9. (1927) L.R. 54 I A. 211: I.L.R. 8 Lah. 597: 52 M.L.J. 729 (P.C.).

partition get for his share Rs. 500 worth of property; but he would have to pay Rs. 250 of the family debts. How far is that situation affected by the sale to *Z*? At a suit for partition by *Y*, *X* and *Z* would be the defendants. If the Court should find that the sale was on the whole justifiable, though only Rs. 500 of the consideration represented debts binding upon the family, *Y* cannot recover any share of the property; but he may be entitled to recover Rs. 250 out of the surplus Rs. 500 that *X* improperly applied to his personal use. (*Arumilli Perrazu* v. *Arumilli Subbarayudu*.[10]) On the other hand, if the Court should find that the sale is good only to the extent of *X's* half share, *X* would be liable to *Z* for the consequential damages to the extent of Rs. 500. (*Adikesavan Naidu* v. *Gurunatha Chetti*.[11])

And is *Y* to get his half share of the property free from all liability to contribute his own share of the family debts, to *X* or to *Z* who stands in *X's* shoes? Surely, the intervention of the sale to *Z* cannot and ought not to put *Y* in a better position than what he would have occupied, but for that sale; in other words, *Y* can have property worth only Rs. 250 ***nett***, and must bear Rs. 250 of the family debts. That is the point of decision in *Vadivelam Pillai* v. *Natesam Pillai*.[1]

I have so far assumed that the sale by *X* to *Z* was a real transaction, and that the consideration therefor was not manifestly inadequate. If in spite of the apparent recitals of consideration, the transaction should be a gift or a sham, *Y* would be at liberty to recover from *Z* the entire property including *X's* share; for, by the law of this Province, a coparcener can sell his share for value, but cannot make a gift of it: *Rottala Ranganatham Chetty* v. *Pulicat Ramaswami Chetty*[12] and *Krishna Reddi* v. *Raghava Reddi*[13].

If the sale by *X* to *Z* was supported by consideration to the extent of, say, Rs. 100, and the rest of the consideration was nominal or fictitious, the transaction would be substantially a gift; and the proper course would be to declare that the sale was void, and to give *Z* a charge on the property for the Rs. 100. If the Rs. 100 should represent a binding family purpose, *Y's* share also would be liable therefor; otherwise, only *X's* share would be liable; but the distinction may not be of much practi-

1 (1912) I.L.R. 37 M 435 at 437· 23 M.L.J. 256
10 (1921) L R 48 I A 280. I L R 44 M 656 at 663· 41 M L J 33 (P C.)
11. (1916) I.L.R. 40 M 338: 32 M L J. 180 (F.B.)
12 (1903) I.L.R 27 M. 162
13. (1927) 53 M L.J. 700 (P.C.)

cal consequence from the point of view of Z, as X's share by itself would be ample security for the Rs. 100. (*Rottala Ranganatham Chetty* v. *Pulicat Ramaswami Chetty*.[12])

Next, I turn to the case in *Venkatapathi Nayakar* v. *Pappia Nayakar*[6], which purports to dissent from *Vadivelam Pillai* v. *Natesam Pillai*[1] and the cases following it. The facts were these: At the time of the disputed sale, the alienating coparcener Subba Naick had only a fourth share. The plaintiff who challenged the sale was his son; and Subba Naick's father too (*i.e.*, plaintiff's grandfather) was alive at the date of the sale. Subsequent to the sale, but before suit, plaintiff's father and grandfather were dead. Subba Naick purported to sell the entirety of certain property for Rs 600; but the consideration proved amounted only to Rs. 400. The Courts found that the property was really worth Rs. 2,000.

The first Appellate Court assumed that plaintiff and Subba Naick had each a half share in the property; and it held that the sale was not binding on plaintiff's share to any extent. The plaintiff filed a second appeal to the High Court; and his contention in second appeal was that the whole sale must be set aside on condition of his paying to the vendee Rs. 400, which he was willing to do.

For the alienee-respondent, it was conceded in second appeal, that Subba Naick's share was only one-fourth; and the only question was, if the alienee was to be deprived of even that one-fourth share, subject to the reimbursement of Rs. 400. Subbiah Naick's one-fourth share was worth Rs. 500; and the sale was supported by consideration to the extent of Rs. 400 only. In those circumstances, the High Court took the view that the proved consideration was not grossly inadequate, and that it can be regarded as the price of the alienor's share, though it was less than the value of such share; accordingly, the High Court upheld the transaction as a sale of the father's share only, *i.e*, one-fourth of the property. Thus, the alienee suffered no real prejudice by reason of the decree of the High Court, which secured to him his full money's worth and a quarter more.

Next, I turn to consider the facts in *Vadivelam Pillai* v. *Natesam Pillai*.[1] One Chinnappa, the managing member of a family consisting of himself and his nephew, sold certain

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1 (1912) I.L.R 37 M 435 at 437 23 M.L J. 256
6 (1928) I L.R. 51 M 824 55 M.L.J. 489.
12 (1903) I.L.R. 27 M 162

family property for Rs. 500; of that sum, Rs. 250 alone was found to be binding on the family, and the remaining Rs. 250 was not binding on the plaintiff-nephew. The sale was presumably for a fair price as there was no suggestion to the contrary. In those circumstances, the High Court decreed to the plaintiff a half share in the property sold by his uncle, on condition that plaintiff should pay Rs. 125 to the alienee. Such a conditional decree is sanctioned by the decisions of the Privy Council in the analogous cases of *Ram Charan Lonia* v. *Bhagwan Das Maheshri*[15], *Bannwari Lal* v. *Mahesh*[16] and *Skinner* v. *Naunihal Singh*[17].

The principle of the decision is thus stated at page 437:

> "According to accepted equitable principles, in the absence of anything appearing to the contrary, the consideration for the sale must be distributed over the whole of the property sold in proportion to the value of each part. On this principle the whole of the Rs 500 must be distributed over the shares belonging to the plaintiff and Chinnappa respectively. There is no ground for supposing that one portion of the consideration was allocated to a particular half share and the other portion to the other half share. The valid portion of the consideration as well as the invalid portion must be distributed over each of the half shares of the plaintiff and Chinnappa respectively The result would be that the plaintiff would be bound to pay one-half of the Rs. 250 held binding on the family, that is Rs 125, before he can recover possession of the half share claimed by him."

From the above analysis of the cases *Vadivelam Pillai* v. *Natesam Pillai*[1] and *Venkatapathi Nayakar* v. *Pappia Nayakar*[6], it appears that the two decisions can well stand together; for, each case must be taken to decide no more than what was necessary for the judgment. On the facts, the crucial distinction between the two cases is this: In *Vadivelam Pillai* v. *Natesam Pillai*[1] the alienee paid fair price for the property purchased by him, though only one-half of it represented family necessity; on the other hand, in *Venkatapathi Nayakar* v. *Pappia Nayakar*[6], the price paid by the alienee was even less than the value of the alienor's one-fourth share.

True, *Vadivelam Pillai* v. *Natesam Pillai*[1] itself dissents from the reasoning in *Marappa Goundan* v. *Rangaswami Goundan*.[5] But in *Marappa Goundan* v. *Rangaswami Goundan*[5] the first Appellate Court found that the second item of the con-

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1 (1912) I.L.R. 37 M 435 at 437: 23 M.L.J. 256
5 (1899) I.L.R. 23 M 89
6 (1928) I.L.R. 51 M 824 55 M.L.J. 489
15. (1926) L.R. 53 I.A. 142: I.L.R. 48 A 443 at 456 (P C.)
16 (1918) L.R. 45 I A 284: I.L R. 41 A. 63 at 68 (P.C.).
17. (1913) L R. 40 I.A. 105: I L R. 35 A 211 at 216. 25 M.L.J. 111 (P.C).

sideration for the sale there in question was neither "real nor *bona fide*"; and nothing is known as to the value of the property or of the alienor's share therein. For aught one can guess, the facts in *Marappa Gaundan* v. *Rangaswami Gaundan*[5] were probably on all fours with the facts in *Venkatapathi Nayakar* v. *Pappia Nayakar*[6].

The broad proposition enunciated in *Marappa Gaundan* v. *Rangaswami Gaundan*[5] is this:

> "The alienee is only entitled to the share of his alienor, and has no further claim on the shares of the other coparceners in respect of the sum for which the alienation was rightly made"

In the estimation of Sir John Wallis, that proposition does not rest on any sound principle (*Seetharam Naidu* v. *Balakrish Naidu*[2]); and it has not commended itself to the bulk of judicial and professional opinion. But the rule in *Vadivelam Pillai's case*[1] is in popular vogue because of its even-handedness:—equity is equality.

K. C. G.

SUMMARY OF ENGLISH CASES.

In re CITY EQUITABLE FIRE INSURANCE COMPANY, LTD., (1930) 2 Ch. 293.

Bankruptcy Act, S. 31—*Insurance Company—Deposit for securing due performance of reinsurer's obligations—Winding up of reinsurer company—Surplus after satisfying obligations—Other sums due to the insurer—If insurer entitled to set off—Interest on deposit.*

By a treaty of reinsurance between *G* insurance company and *C* insurance company (Reinsurer), *C* accepted and guaranteed by way of reinsurance a share of all insurances and reinsurances accepted or renewed by *G* in its fire department. The treaty provided that *G* shall be entitled to accumulate out of any moneys due to the reinsurer a sum equal to 40 per cent. of all premiums credited to the reinsurer in respect of the first 12 months of this agreement and this sum *was to remain in G's hands as security for the due performance of C's obligations under the agreement.* When any default was made by *C*, *G* was entitled to take the requisite sum out of this deposit. *G*

1. (1912) I.L.R. 37 M. 435 at 437: 23 M.L.J. 256
2 (1913) 26 M.L.J 604 at 611.
5. (1899) I.L.R. 23 M 89.
6 (1928) I.L.R. 51 M 824: 55 M.L.J. 489,

was to pay interest to C at 3½ per cent. on the remaining deposit. If at any time C should go into liquidation, G had the right to terminate the agreement forthwith by notice. On February 14, 1922, a compulsory winding-up order was made against C on a petition presented in January and G thereupon determined the agreement by notice. After all obligations under the treaty had been satisfied, there remained with G a balance of 8000*l*. in deposit and a sum of about 1800*l*. representing interest accrued on the deposit. G claimed to be entitled to set off balances due from C under other treaties, contracts and policies of insurance and reinsurance against the balance of the deposit and the interest.

Held, by Maugham, J., that the moneys which G was entitled to retain and accumulate must be taken to be moneys left with G *for a specific purpose* and that, therefore, G was bound to pay over the balance of the deposit and interest.

Held, by the Court of Appeal:—That the Article in the treaty makes a distinction between the portion of the premiums which G was entitled to retain as a deposit and the interest upon that sum which remains to the credit of C. The interest is clearly and definitely directed to be paid "to the reinsurer". It is not to be credited in account or added to the accumulating fund. It represents, therefore, a debt due from G to C and hence falls within S. 31 of the Bankruptcy Act as being a mutual credit or debit arising by reason of the relationship and ought to be brought into account.

But as to the accumulated fund, they were moneys collected and held by G as security and is set apart from the ordinary current accounts between G and C, and, therefore, in the absence of any new contract which freed the fund from the definite purpose of being security for due performance of C's obligations under the agreement, there can be no set off in respect of the balance of the fund not required for the purpose for which it was accumulated in the hands of G.

ATTORNEY-GENERAL *v.* PRICES' TAILORS (1928) LIMITED, (1930) 2 Ch. 316.

Local Government—Public Health Act, 1875, *S.* 155—*'Front' of a house—Meaning of.*

The defendant firm purchased two shops, each shop consisting of a building of three stories. The ground floor of each shop projected a distance of 4 ft. 3 in. beyond the line of the exterior wall of the first and second floors. The defendants

proposed to cut away the main wall between the two shops and convert both into one shop with an entrance from the street. The Borough Corporation disapproved the plan and desired the setting back of the building line in a line with the first and second floor's main wall. The defendants disputed the right of the Borough to prescribe a new building line, as they contended that they did not take down the 'front' of the building within the meaning of S. 155 of the Public Health Act.

Held, by Luxmoore, J.—*Prima facie* a house or building consists of all its floors and the exterior walls of the first and second floors are in the present case as much part of the front of the house as the exterior wall of the ground floor projection. A house might possibly be considered to be taken down, if only a few bricks were left standing. But, when a substantial portion, such as the whole top floor, is left untouched, the house cannot be said to be taken down. The defendant never intended to take down his front but only to take out part of it, leaving a substantial portion untouched.

Held, by the Court of Appeal.—The right of the urban authority to prescribe a building line under S. 155 arises only when the house or the building or the front has been taken down. 'Taken down' does not mean merely remodelled, it means 'removed' and the question for the Court is whether there has been a demolition of so large a portion of the house or the front of it as to justify it in holding that the house or the front of it has been taken down.

In re ROBINSON. LAMB *v.* ROBINSON, (1930) 2 Ch. 332.

Will—Revocation—Gift of an annuity to A *by will—Later will gifting an absolute interest in favour of the same* A*—Later will invalid, as being attested by* A's *wife—Whether revokes the earlier will.*

A testatrix bequeathed in 1914 her residuary estate unto her trustee upon trust to pay an annuity therefrom to *A*. In 1921 she executed another will which she called as "her last will and testament" and gave the whole estate to *A*. But the will was found to be invalid as it was attested by his (*A's*) wife.

Held, that the first will was not revoked. On the recent authorities, the test is not the inconsistency of a gift in the later will as held in *Baker* v. *Story*, 31 L.T. 631, but one of the intention of the testator to revoke the earlier will. If the testator had made two distinct gifts to a person by two instru-

ments, it must be ascertained from the language of the two instruments whether the first gift has been altogether displaced. If there is a clear intention to revoke the earlier instrument, the failure of the second gift will not restore the first one.

In re WATSON. CULME-SEYMOUR *v.* BRAND, (1930) 2 Ch. 344.

Will—Construction—'Born in my lifetime or within due time after my death'—Meaning of.

By his will the testator declared that if a son should be born to *W.W.* or *M.C.S.* (both successive tenants for life in remainder) during his lifetime or 'within due time' after his death, then the estate in tail male which he had previously devised to each such son shall not take effect but in lieu thereof he (the son) shall take as tenant for life. The testator died in 1899 and the plaintiff, a son of *M.C.S.* was born in 1909. On the death of *W.W.* the tenant for life under the will, the plaintiff came into possession (his father having died during *W.W.'s* life-time) and executed a disentailing deed.

Held, 'within due time' meant only the period of gestation and not the perpetuity rule period of 21 years and, therefore, the disentailing deed was operative, and the shifting clause reducing the estate to one for life did not apply. The Court will choose a construction which gives an intelligible, if whimsical meaning to the words, to one which would not only avoid the limitation but would really give no clue to what the testator meant by 'due time.'

In re CASTNER-KELLNER ALKALI COMPANY, LIMITED, (1930) 2 Ch. 349.

Company—Amalgamation with another company—Approval of the scheme and the terms of amalgamation by more than 90 per cent. of the transferor company—The transferee company amalgamated later with another company—Dissentient shareholders of first company if bound to accept scheme—S. 155, *Companies Act,* 1929.

Two companies, *C* (transferor) and *B* (transferee), were to be amalgamated on certain terms which over 90 per cent. of *C's* shareholders agreed to but there were a few dissentient shareholders. In 1926 a further amalgamation took place of *B* with Imperial Chemical Industries, Ltd., by which *B* was to be acquired by that company on certain terms. A petition was

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filed by *B* under S. 155 of the Companies Act against the dissentients of *C* to accept a rate which the last transferee company offered to *C's* approving shareholders and to issue a notice to them that it desired to acquire their shares on those terms. It was contended that *B* having in turn been acquired by the Imperial Chemicals, *B* could no longer give effect to its terms and S. 155 cannot be invoked, as in effect it is a new scheme which is now imposed on them and not the one at the time of amalgamation of *C* with *B*.

Held, by Eve, J., that the application was within the section. There is nothing in the section to control the nature of the offer the applicants may put forward. It is for the Court to consider and decide whether it is an adequate and satisfactory one, and, if not, to substitute such other terms of purchase as in its discretion are fair and just.

MARCONI'S WIRELESS TELEGRAPH CO v. NEWMAN, (1930) 2 K.B. 292.

Bankruptcy—Deed of inspectorship—Inspector leaving the conduct of the business to the debtor—Inspector and committee of inspection how far personally liable to creditors—Partner ceasing to concern himself with the business—Effect of.

The plaintiffs were the owners of certain Letters Patent in respect of inventions relating to wireless apparatus and the defendants *N* and *B* were the holders by novation of a license from them to use and exercise the inventions subject to payment of a certain amount as royalty. *N* and *B* got into difficulties due to shortage of liquid capital and the creditors therefore appointed a committee of inspection to supervise the business. *N* and *B* duly executed a deed of inspectorship and *C* was appointed the inspector. The debtors *N* and *B* assigned all their estates to *C* as inspector upon trust to allow the debtors "henceforth to manage and carry on their said business" subject to the covenants and conditions of the deed. In a circular issued by *C*, he stated that "all orders for goods required for the purpose of carrying on the business will be issued on my official order forms in the usual way and will be paid for by me". The plaintiffs claimed from *N* and *B* as also *C* and the members of the committee personally the royalties that became payable after the deed of inspection was executed.

Held, that the deed of inspection was similar to the one in *Easterbrook* v. *Barker,* L.R. 6 C.P. 1, and upon the authority of that case the business remained the business of the

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debtors, who undertook to carry it on or to wind it up, as the inspector and committee should think best. Such a deed does not constitute a partnership between the debtors and their creditors or between them and the inspector and the committee. In view of the language of the deed in question, the debtors *N* and *B* do not become the agents of the inspector or of the committee to carry on the business. The true position was that the plaintiffs were content to allow the business of *N* and *B* to continue as before in the hope and expectation that after surmounting the crisis, which all believed to be but temporary, *N* and *B* would be able to pay such royalties as might be incurred by them through a continuance of their trading. The inspector and committee could not, therefore, be held liable for the royalties.

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As to the contention by *B* that he ceased to concern himself with the business, as he and *N* took different views as to how it should be conducted and he found himself powerless to secure the prevalence of his own view, and therefore ought not to be made liable,

Held, that he nevertheless remained a partner in the business and was therefore liable.

HOLMES *v.* PAYNE, (1930) 2 K.B. 301.

Insurance—Pearl necklace—Insurance against loss of—Necklace mislaid and believed to have been lost—Company agreeing to give articles of equal value—Subsequent discovery of necklace—If agreement to give can be rescinded—'Loss,' meaning of.

The defendant had insured with the plaintiffs her articles of jewellery including a pearl necklace. The policy provided that, in consideration of the premium mentioned therein, the underwriters agreed to insure against all loss which the assured may sustain by the loss or damage to the insured jewellery. The defendant missed the pearl necklace, searched for it in all conceivable places and wrote to the company that it was lost. At their instance, she further searched for it but without result. Then the underwriters entered into an agreement with her to replace the lost jewels of the value of the necklace and she selected the jewels also for a certain value and was in process of selecting further to exhaust the balance of the value of the necklace. By that time the missed necklace was found in an evening cloak. The underwriters then claimed a return of the replaced jewellery on the ground that the replacement agree-

ment was void as having been made under a common mistake of fact. The defendant counterclaimed for the balance.

Held, the replacement agreement cannot be rescinded or reopened. The defendant made a thorough search of the standard of a reasonably diligent woman for the necklace. The agent of the underwriters was not wholly induced by the defendant's representations—innocent and honest—but himself investigated and formed his own conclusions on all facts and not on what he was told by her. Though ordinarily an adjustment could be re-opened, the position is very different where a payment—either in money or in kind—has been made. (*Da Costa* v. *Firth*, 4 Burr. 1966.)

A thing can be lost even when it is in the owner's house. A thing may be mislaid and yet not lost. But if a thing has been mislaid and is missing or disappeared and a reasonable time has elapsed to allow of diligent search and of recovery and such diligent search has been made and has been fruitless, then the thing may properly be said to be lost. Uncertainty to recovery of the thing is the main consideration on the question of loss.

Robert A Munro & Co, Limited *v.* Meyer, (1930) 2 K.B. 312.

Contract—Sale of goods—Delivery by instalments—Each delivery to be treated as a separate contract—Goods to be taken with all faults and defects—Delivery of some instalments—Goods discovered to be adulterated and not of contract quality—Seller purchasing from another—Seller himself ignorant of the defect in the goods—Delay in discovery—Effect of, on the contract.

By a contract made between the plaintiffs—dealers in cattle foods at London and the defendant—merchant trading at Hamburg, for sale of 1,500 tons of meat and bone meat, it was provided that (*i*) the goods were to be of a certain specified quality, the composition of the production being specified, (*ii*) that it was to be shipped in equal weekly instalments of 125 tons, (*iii*) "each delivery or shipment to be treated as a separate contract and the failure to give or take any delivery or shipment shall not cancel the contract as to future deliveries or shipments, and (*iv*) "the goods to be taken with all faults and defects; damaged or inferior, if any, at valuation to be arranged mutually or by arbitration." The plaintiffs made certain deliveries which the defendants accepted without demur.

Subsequently the defendant being in financial difficulties entered into another agreement to pay some amount for cancelling the balance of the contract and reducing the quantity to be supplied. After some deliveries were completed, the defendants discovered that the meal had been adulterated by an admixture of cocoa husks and refused to make any further payments. They also found that the previous deliveries were bad. The plaintiffs were blameless and knew nothing of it, the adulteration having been made by the manufacturers of the meal, from whom the plaintiffs purchased it.

Held, that the article delivered did not answer the contract description and might have been rejected, notwithstanding the clause that 'the goods to be taken with all faults. . .' That clause only applies where the goods answer the trade description and does not shut out the implied warranty under S. 13 of the Sale of Goods Act; that though the seller was unaware of the facts and could not have had an intention to break the contract, yet as there was a persistent breach, deliberate so far as his manufacturers were concerned, continuing for nearly one-half of the total quantity, the buyer is entitled to say that he will not take any further deliveries and that the contract was repudiated. The intention of the seller must be judged from his acts and from the deliveries which he in fact makes. But the contract cannot be set aside as it is not clear that even if the defendant had known the defective deliveries, he would have elected to treat the contract as at an end and further it will not now be possible to restore the parties to their original position. The provision in the contract that each delivery shall be treated as a separate contract cannot be construed so as to defeat the rights of the buyer under section 31 of the Sale of Goods Act, 1893. The buyer was anyhow entitled to damages in respect of the defective quality of the meal supplied and cannot be compelled to take any more deliveries.

KODAK, LIMITED *v.* ALPHA FILM CORPORATION, LIMITED, (1930) 2 K.B. 340.

Practice—Procedure—Summons for leave to sign judgment—Refusal of—Defendant—Conditional leave to defend—If Court can impose conditions to defending.

The Court refused leave to sign final judgment under O. 14 of the Rules of the Supreme Court in an action for a specific claim as due for goods sold and delivered to the defendant. But it nevertheless imposed conditions on the defendant before

entering on his defence, like that the case should be entered in the short cause list for trial by a Judge alone without a jury.

Held, by the Court of Appeal (Scrutton, L.J., dissenting) that where the Court is not prepared to give leave to the plaintiff to sign judgment, it cannot impose conditions on the defendant. But if the Judge is inclined to grant leave to sign judgment, he may impose conditions on the defendant before permitting him to defend.

FISHER v. OLDHAM CORPORATION, (1930) 2 K.B. 364.

False imprisonment—Borough Corporation—Watch Committee Police—Arrest of plaintiff by mistake—Corporation if liable for the Borough Police's arrest.

Information was laid for the arrest of one *R* and a warrant issued under the hand of a Justice of the Peace for the Borough of Oldham for his arrest. The Oldham Police communicated with the London Police as *R* was suspected to have run away to London. The London Police arrested the plaintiff mistaking him to be *R*, handed him over to Oldham Police, who detained him for several hours, till the mistake was discovered. In an action for false imprisonment against the Corporation,

Held, that the Oldham Police Officer was not a servant of the Oldham Corporation. Any appointment by the Watch Committee of a constable was subject to the controlling regulations of the Home Secretary, and the powers of suspension are shared with the local magistrate and controlled and limited by other statutory provisions. The constable is a servant of the State, a ministerial officer of the central power, though subject, in some respects, to local supervision and local regulation. The Corporation cannot, therefore, be held liable if the police appointed by the Watch Committee arrest and detain a person unlawfully.

Lambert v. *Great Eastern Railway Company,* (1909) 2 K.B. 776; *Goff* v. *Great Northern Railway Company,* (1861) 3 E. & E. 672 and *Edwards* v. *Midland Railway Co.,* (1880) 6 Q.B.D. 287, distinguished.

Stanbury v. *Exeter Corporation,* (1905) 2 K.B. 842 and *Coomber* v. *Justices of Berks,* (1883) 9 A.C. 61, followed.

Case-law discussed.

GOTTLIFFE *v.* EDELSTON, (1930) 2 K.B. 378.

Husband and wife—Accident to plaintiff by defendant's negligent motor driving—Action for damages—Marriage of the parties pending action—Effect of, on the action.

The plaintiff brought an action against the defendant claiming damages for personal injuries caused by the defendant's negligent driving of a motor car, in which car the plaintiff was a passenger. Pending the suit, the plaintiff and the defendant married and the question arose if the action can any further continue. The question had to be argued as the real defendant in the action was the insurance company with which the defendant was insured.

Held, that though under S. 12 of the Married Women's Property Act the wife is given full power to guard her separate property, she cannot sue her husband for any tort whether before or during marriage. This action is not an action for the protection and security of the wife's separate property and therefore the action is barred by the prohibitory words in S. 12 "Except as aforesaid, no husband or wife shall be entitled to sue the other for a tort."

The anomalies in the law of husband and wife as at present obtaining pointed out and legislation suggested.

KITCAT *v.* KING, (1930) P. 266.

Will—Codicil—Codicil stating 'This is the last will and testament'—Effect of—Codicil attested by four witnesses, two of them beneficiaries—The beneficiaries not signing with intention to attest—Both will and codicil admitted to probate, beneficiaries' signatures being omitted.

A testatrix executed a will in 1906 and a codicil in 1929 but the codicil stated that "this is the last will and testament of *A.B.*" and was attested by four persons, two of whom were beneficiaries under it. It was found that the two beneficiaries did not intend to sign as attesting witnesses but as one of them stated 'only to make it legal' by expressing their assent to the testatrix so dealing with the property.

Held, that the later will was a codicil which can be read with the first will (*Simpson* v *Foxon,* (1907) P. 54, followed). Probate can be granted of both the will and the codicil omitting the signatures of the beneficiaries under the codicil, as the beneficiaries only signed by way of verification and not as attesting witnesses.

E. J. Smith, In the Goods of, (1889) 15 P.D. 2, followed.

JOTTINGS AND CUTTINGS.

Lord Cecil and the League of Nations.—On some matters of public interest and importance, party rivalries happily disappear. Such is the project which, according to a letter to *The Times* of October 25, has been initiated to pay a tribute to Viscount Cecil of Chelwood for his "unique services to the cause of international co-operation and goodwill." The letter is fittingly signed by Mr. Ramsay MacDonald, Mr. Baldwin, and Mr. Lloyd George. It recalls that the formation and maintenance of the League of Nations are due to the labours of many distinguished men, and many nationalities, but "it has fallen to Lord Cecil to devote himself single-mindedly to strengthening the League and promoting the intelligent understanding of its work among all classes of his fellow-citizens." The proposal is to present Lord Cecil with his portrait, in the hope that it will eventually become a public possession in the National Portrait Gallery, and a Committee has been formed for this purpose.—*L.J.*, 1930, p. 256.

Lord Parker's Scheme.—The services of Lord Cecil ever since the League of Nations was established are well known, and not least his efforts at the recent Assembly of the League of Nations to help on, and in the face of somewhat difficult opposition, the cause of Disarmament. Lord Cecil, as the letter says, has not been alone in his endeavour, and others in France and America, and in this country are well known to have been co-workers with him. But premature death silenced the voice of one of the earliest advocates of a League of Nations, who, had he lived, would have been as zealous in the same cause. We refer to Lord Parker of Waddington. In March, 1918, when the subject was not altogether easy of discussion, Lord Parmoor moved in the House of Lords, "That this House approves of the principle of a League of Nations, and the constitution of a tribunal whose orders shall be enforceable by an adequate sanction." On that occasion Lord Parker stated in detail a scheme for a League which he had prepared. In a letter to *The Times* of March 2, 1918, Sir Frederick Pollock described his speech as by far the most practical contribution towards the formation of an effective League of Peace which had then been made in this country. The work has had to be carried on by others, of whom Lord Cecil has been the chief, and the joint letter of the leaders of the three political parties shows how his work for the League of Nations is appreciated.—*L.J.*, 1930, p. 256.

Cheaper and Simpler Litigation.—A topic which is not concerned with a matter of either Imperial or political interest, and which receives the distinction of being dealt with in a first leading article in *The Times*, may be taken to be one of considerable importance, and the fact that the publication in last Saturday's *Times* of a letter from Mr. Heber Hart, K.C., suggesting certain reforms in our legal procedure, was made the occasion of such a leading article is an indication of the undoubted fact that public opinion is aroused upon the matter. Mr. Heber Hart was the British representative on the Mixed Arbitral Tribunals set up under the Treaties of Peace between Great Britain and Germany and Austria, which have recently concluded their labours, and he has therefore peculiar qualifications for making suggestions as to reforms of procedure; for the Tribunals of which he was a member had to frame and administer their own system of procedure, and to do this in such a way as to satisfy both British and Continental ideas of what was necessary in order to ensure the proper administration of justice. Mr. Hart makes some definite suggestions for the reform of procedure in civil cases—the right to a trial before three judges, and the withdrawal of the right to trial by jury; one appeal only; a preliminary hearing before a Master after the close of the pleading; the fixing of dates for trial in every case; the abrogation of the greater part of the law of evidence; party and party costs to be considerably limited; and the development of a convention that counsel should abandon, or present without advocacy, a case which he feels to be untenable in fact or in law. Every one of these suggestions deserves careful consideration, although some of them will, we think, hardly command the assent of the profession; it is obvious that they cannot here be dealt with as they deserve, and we hope to consider them in another column in the near future.—*L.J.*, 1930, p. 290.

Judge-Made Laws.—Another question, which has more than incidental relevance to the question of the cost of litigation, is raised by Mr. Claud Mullins in a letter in *The Times* of November 11. Mr. Mullins himself recently urged, in an article in the July *Quarterly Review*, to which we referred at the time (*ante*, p. 102), that the practically unrestricted right to a jury and the rigid application of elaborate rules of evidence were among the principal causes of the excessive cost of litigation in this country. In Tuesday's letter he takes new ground by pointing out that our system, by which the reported judg-

ments of decisions in the Superior Courts are binding authorities on all Courts of co-ordinate or inferior jurisdiction, and the fact that such judgments can only be questioned by appeal, is responsible for a considerable part of the cost of litigation. This contention is not to be denied; it is no uncommon thing for a proposing litigant to be advised that the point he desires to litigate is covered by authority, so that he cannot succeed at the first hearing, but that if he cares to go as far as the Court of Appeal—or if the authority in question is a decision of the Court of Appeal, as far as the House of Lords—he has a good prospect of success. And in order to get the law determined he cannot appeal from the reported authority, but must take his own case through the appropriate Court of first instance and any Appellate Courts which have already dealt with the point, in order to have it considered by a Court with authority to deal with it. In such circumstances there are few individuals who are prepared to undertake the necessary financial responsibility, and the result is that many cases remain as authorities on points which might well receive further judicial consideration. A reasonably satisfactory method of dealing with this problem should not be difficult to evolve, and we have our own views on the subject which we may presently propound; but before doing so we shall await with interest Mr. Mullins' promised book, in which we gather he deals fully with the whole matter.—*L.J.*, 1930, p. 290.

Sir Dinshah Mulla.—A correspondent writes: The recent appointment of Sir Dinshah Mulla, C.I.E., to the Judicial Committee of the Privy Council, will be warmly welcomed in legal circles in India, and should prove of great benefit to the litigating public. Sir Dinshah brings to the Board a wide and ripe experience. Starting his career as a solicitor, Sir Dinshah afterwards became an advocate of the Bombay High Court, under special rules not requiring a previous call to the English Bar. He has since built up a very large practice at the Bombay Bar, and is now one of the best-known lawyers in India. He has the special gift of being able to extract the guiding principles of any particular branch of law, and to select only the best authorities for citation in support of such principles. This is well exemplified in his numerous text books, which are widely used throughout India. His versatility is shown by the diversity of the subjects on which he has written, either singly or in collaboration with others, *e.g.*, Hindu Law, Mahomedan Law, Civil Procedure Code, Registration Act, Stamp Act, and Con-

tract Act. He has also filled many high offices from time to time, having acted as Law Member on the Viceroy's Executive Council, as High Court Judge and as Advocate-General, Bombay, and has also been Principal of the Government Law College, Bombay. Recently, he has done particularly good public service by his work on the Government of India's Committees for re-drafting the Sale of Goods sections in the Contract Act, and portions of the Transfer of Property Act. In the result, the Amending Bills passed through the Indian Legislature with practically universal approval. It is of interest to note that Sir Dinshah is the first Parsi, the first non-barrister Indian advocate, and the first Indian ex-solicitor to sit on the Judicial Committee.—*L.J.*, 1930, p. 291.

Justices, Husbands and Wives.—Caustic judicial comment on the strange manner in which Justices grant separation orders was recently quoted in this column. I observe that "C.L.H.," whose pungent style suggests the same authorship as that of the article on "Justices' Justice," which evoked a flood of comment and correspondence in the *Week-End Review*, has contributed an article to *The Nation* on the ways of Magistrates in making separation and maintenance orders. He is clearly of opinion that the Magistrates' mode is worse than a crime. Magistrates, including the women Magistrates, so often drawn from the class of "Social Workers," are nearly always for the women: and they will break up the state of matrimony with appalling freedom, frequency and speed. Orders for maintenance are often made without any due regard to the means of the husband. He may be unemployed and his wife employed or in comparative affluence; but while he is in arrears he cannot obtain a variation of the order, and may be committed to gaol for failure to pay money which he never had. His theoretical right of appeal to the Divisional Court is in practice impossible to exercise.

I think that "C.L.H.'s" suggested remedy is sound, namely, that this vastly important and most difficult jurisdiction should be transferred to a tribunal which has knowledge of evidence and of the law; namely, to the County Court Judges. The Justices certainly are not equal to the task which has been thrust upon them.—*L.J.*, 1930, p. 300.

Swift, J., on Domestic Unity.—There is no manner of legal doubt that in the trial of a charge of assault by a husband

on his wife, the wife is a competent witness, as she is often the only one. The Court of Criminal Appeal has now gone a step further, aparently a necessary step, and, upholding a ruling of the Assize Judge, has stated that she is a compellable witness. This appears to be inevitable, but if, as usually occurs in such cases, her sympathy and love for her husband revive in his hout of trial, she will continue to be an eminently unsatisfactory witness for the prosecution. Douglas Jenkins, for the prisoner, did his best against the ruling of the judge of Assize; he cited a strong saying of Lord Atkinson in support of his contention, and went on to add that a rule compelling a wife to give evidence against her husband would tend to break up the unity of the home. This observation led Swift, J., into too great a temptation. "Assaulting a wife," said he, "is calculated to break up her unity," and further spake: "It might make for unity if she is able to say to her husband afterwards, 'I did not want to, but they made me.' " Perhaps.—*L.J.*, 1930, p. 301.

Case-Law and Economics.—How far is it permissible for Judges to be influenced in their decisions by economic theories? That, substantially, was the question dealt with on Fiday of last week by Prof. W. Hughes Parry in his lecture (*see* p. 343, *post)* at the London School of Economics on "Economic Theories in English Case Law," and by the Lord Chancellor in his opening remarks. In Lord Sankey's view, the more politics can be kept out of law the better; he would have them kept in water-tight compartments, and he referred in feeling terms to the trouble he has had in the last six weeks in attempting to put abstract theories of politicians into the shape of practical legal concepts. In other words, "equality of status" for the constituent members of the British Commonwealth of Nations is easier as a political slogan than as a working principle of Constitutional Law. Very likely that is so, but as regards economic theories, it may be impossible to sever them from law, and Prof. Parry gave numerous instances in which Judges have been guided in the past by either their own, or the prevailing theories as to trade and employment. The Common Law is based on the freedom of the individual, and this is strikingly shown in the doctrine of Restraint of Trade. All restraints of trade of themselves, said Lord Macnaghten in the *Nordenfelt Case,* (1894, A.C. 535), if there is nothing more, are contrary to public policy, and therefore void. This, with the doctrines of freedom of contract and *laissez faire*, has been

the prevailing characteristic of judge-made law; but in Prof. Parry's view, it is out of date, and the latest theories require that the law on which lawyers have been brought up should be corrected by social philosophy and by legislation. No doubt that is the tendency of the times, but at the risk of being also condemned as out of date, we may express the hope that the change from the Common Law as expounded by the Judges, to the socialisation with which we are threatened will not be too rapid.—*L.J.*, 1930, p. 326.

Slessor, L.J., and the Junior.—It is no secret that the appointment of Slesser, L.J., direct from the Bar to the Court of Appeal was regarded with some misgiving by some of the old hands in a Court which has suffered some serious reverses, but on the whole is justly proud of its judicial prestige. But Slesser, L.J., has indubitably made good, and removed by his performances all just cause for apprehension. He has demonstrated that he is not a judge of the mere concurring kind, and when he is with the majority he states his reasons in clear and lucid speech.

Recently, I rejoiced to see him do an act which moved me mightily in that warm regard which members of the Bar entertain for their exalted colleagues on the Bench. A young member of the Bar, Mr. Ifor Lloyd, appearing alone for the respondent in a case in which Schiller, K.C., led for the appellant, made an admirable and successful speech. I observed a note pass from Slesser, L.J., to counsel; and I assume that it was in recognition of a good forensic performance under the testing conditions of a first appearance in that Court.

A kindly act, in accordance, if I may respectfully say so, with the best traditions of the Bench.—*L.J.*, 1930, p. 336.

Mr. Justice McCardie on Perjury.—We print this week a report of the lecture on "Truth," which Mr. Justice McCardie gave to the Medico-Psychological Association on November 20. Every application of Law depends on the facts to which it has to be applied, and unless the facts are truly known, the application of the law must be wrong. It was, we believe, Lord Russell of Killowen who, as Sir Charles Russell, used to insist on the primary importance in each case of getting at the facts. It is like the old adage of the pennies and the pounds. Take care of the facts, and if the law will not take care of itself, at least

you have put it in the right groove, and the rest is mere argument—interesting, but still quite a minor matter. And so the learned Judge could not take a higher or a more practical theme than "Truth"; so high and so practical that Lord Bacon made it the beginning of the concentration of wisdom known as his Essays. "No pleasure is comparable to the standing upon the vantage ground of truth." But unfortunately, Mr. Justice McCardie speaks rather of the absence of truth than of truth itself. He has had a long experience at the Bar and on the Bench in the Civil and Criminal Courts, and has come to the conclusion that much evidence is tainted either by self interest or bias, while in addition, wilful perjury has never been more rife than at the present time. It appears, indeed, to be one reason of the excessive costs at which people are grumbling, for if perjury could be stopped, the length of trials, says Mr. Justice McCardie, would be shortened, and that, of course would mean a lessening of costs.—*L.J*, 1930, p. 345.

Two Voices.—But

> "Two Voices are there; one is of the Sea,
> One of the Mountains; each a mighty Voice"

And so from the voice of the eminent Judge whose experience has been in the Criminal and Common Law Courts, we turn to another voice which sounds from the Courts of Equity. Mr. Justice Eve, also speaking among the men of science, though after a festivity which was not a prelude to his brother Judge's lecture—the 268th anniversary dinner last Monday of the Royal Society—rejects the charge of perjury in the Civil Courts, though he thinks it may well be that perjury is not an unusual accompaniment to the sordid stories which are told in the Criminal and Divorce Courts. It is an admission which seems to give the game away, for while Mr. Justice McCardie did not exclude the Equity Courts from his indictment, yet it is probable that, as regards civil cases, he was specially referring only to the Common Law Courts and the County Courts. And we may assume that he would be quite willing to leave to the the Equity Judges the satisfaction of being accustomed to evidence of a less impeachable kind. And yet has it not been said of Chancery procedure: Truth will out, even in an affidavit. However, the fact probably is that the honesty of witnesses is a matter of the venue. It is high when the venue is in the Chancery Division. And elsewhere if, as Mr. Justice Eve says, it would be too sweeping an assertion to copy the Psalmist, yet

evidence has often to be received with caution. But while we naturally hesitate to pronounce between two such voices, we may at least say that Mr. Justice McCardie has uttered a timely warning.—*L.J.*, 1930, p. 345.

Expert Witnesses.—But controversy apart, Mr. Justice McCardie's examination of the idiosyncrasies of expert witnesses is a valuable contribution to the proper appreciation of this kind of evidence. A note to Mr. H. Fletcher Moulton's "Life or Lord Moulton" (p. 47) says: "My father used to quote Lord Bramwell's version of the joke about witnesses? 'There are liars,—liars, and scientific experts'—and then, of course, there's my brother Fred." Sir Frederick Bramwell was a very eminent engineer, and a doughty opponent in the witness-box. But when a scientific witness becomes a partisan for his own side, and a doughty opponent of the other side, he is not much good for the purpose of evidence. As to the facts," says Mr. Justice McCardie, expert witnesses usually agree. It is when they come to opinions that they take sides, and then they cease to be witnesses of fact. The learned Judge notices that while this is so, they take the same oath in support of the correctness of their opinions as in regard to their statement of facts. It would hardly do, perhaps, to send the rival experts to the Bench and make them sit as assessors with the Judge, though this would tend to moderate their opinions, and would make it easier for the Judge to arrive at a safe decision. The alternative would be to drop the form of their being witnesses and produce them solely for the sake of their opinions. Since, however, in such cases, the oath is very much a form, this would not alter the present position. The result is that expert witnesses must stand in a class apart, but happily, in the view of Mr. Justice McCardie, the standard of professional integrity and honour in this matter is growing.—*L.J.*, 1930, p. 346.

The Custody of a Child.—The case of *Re Carroll*, in which the Court of Appeal gave judgment on Tuesday (*Times*, 3rd instant) revives a phase of litigation which was familiar some forty years ago, when the late Dr. Barnardo, whose homes fortunately are still doing their benevolent work, sought to defend the care of his wards—or those whom he considered his wards—in the Court of Appeal and in the House of Lords (*Barnardo* v. *McHugh*, 1891, A.C. 388; *Barnardo* v. *Ford*, 1892, A.C. 326). Of course, in all contests

of this nature, the welfare of the child is the guiding consideration, though, subject thereto, the parent has the right to control its custody and religious education. As to the merits of rival denominations—Church of England, Nonconformist, or Roman Catholic—the Court has, of course, no view, and this was stated clearly—indeed, the statement could hardly be avoided—in the divergent judgments of Scrutton, L.J., and Greer, L.J. The Court, said the former, was perfectly impartial in matters of religion, for the reason that it had, as a Court, no evidence, no knowledge, no views as to the respective merits of the religious views of various denominations. "The responsibility for religious views is that of the parent, not of the Court." And Lord Justice Greer said that, from a religious point of view, the Court must assume that the welfare of the child would be adequately provided for in whatever faith she was brought up. Apart from the preference of the mother—the child was illegitimate—for the Catholic faith, the point really at issue was whether it was better for her to be brought up in an institution, or by individuals who would adopt her. Lord Justice Greer preferred the home; Lord Justice Scrutton—and it is to be presumed Lord Justice Slesser, who concurred in his judgment—the institution. Practically, of course, it depends on the kind of institution, the kind of home, and the kind of child.—*L.J.*, 1930, p. 346.

Essays and Observations.—In five lines prefacing the collection of Essays and Observations just published by Messrs. Cassel, the Lord Chief Justice says: "This little volume is explained, though it may not be excused, by the requests of many friends." One is constrained to thank those many friends. The book is not polemics, like Lord Hewart's last publication, but a bringing together within one cover of essays and addresses on the most varied topics, some of them already published elsewhere. On his own subject, Law, Lord Hewart re-affirms his support of the Macnaghten Rules, going straight to the point in his comment, in a paper delivered before the Medical Society of London, that, should an exception be made for what has been called the irresistible impulse,

"The crucial, the overriding, the dominant question would forthwith come to be, whether (the accused) was acting under an irresistible impulse. And upon what materials and with what guidance, would the jury be called upon to answer that

question? Would there be any materials or guidance at all except the medical opinion which the prisoner might be fortunate enough to be able to adduce in his favour, contradicted by the medical opinion which might be offered on the part of the prosecution?"

Welcome, also, is the inclusion of the clear and thoughtful address on Ethics, Law, and Legislation, which formed the first of the national broadcast lectures, and has already been commented on in these pages. Amongst the complimentary speeches, many will turn with interest to that delivered at the Garrick Club in honour of Lord Sankey, in which Lord Hewart recalled, in speaking of the Chancellor's leaving the Law Courts with their modest emoluments and their reasonable security of tenure, that during his eight years as "Lord Chief" he had seen no fewer than five occupants of the Woolsack, and went on:

"Gentlemen, the restraint and decorum of the first and the suave urbanity of the second, were qualities which were not so much transformed as developed in the transcendental idealism of the third, the robest pugnacity of the fourth, and now in the sublime composure of the fifth. There is, in fact, only one danger that threatens the present Lord Chancellor. He has no enemies."—*L.T.*, 1930, p. 342.

A Dickens Disciple.—Without flattery it may be said of Lord Hewart as a stylist that "he touches nothing that he does not adorn," and the Essays and Observations are studied with those apt and balanced phrases and neatly turned epigrams he has led us to expect from him. To drag witticisms out of their context is for the most part to slaughter them, but those familiar with the procedure of the House of Lords will recognise the appropriateness of the learned author's comment when, in the address to the Chancellor already referred to, he remarks of that assembly that three things at least can be said for it: "It meets late and rises early. It is troubled by few speeches. And thirdly, and above all, nobody can hear them." Passing from law to literature, Dickens and *Bardell* v. *Pickwick* furnish occasion for delightful essays. For the range and accuracy of the knowledge of the law which Dickens possessed Lord Hewart is full of generous enthusiasm, as he is for all that appertains to him. "There is," he says, laying to valiantly, "no need to dwell upon objections raised by slight minds. The hee-hawing jackasses of this world have no doubt sometimes just sense enough to perceive when Homer nods

................let us rather think of the debt we owe to an incomparable and most fertile artist who was at the same time a great human being."—*L.T.*, p. 342.

Civil Procedure.—It will have been noted that towards the end of last week the Lord Chancellor received a deputation from the London Chamber of Commerce to discuss the question of the cost of litigation. The proposals made by the Chamber were dealt with fully in this journal (*see* vol. 169, pp. 391 and 441). Last week the Lord Chancellor promised to give them very careful consideration. Meanwhile an interesting, precise and thoughtful letter appeared in *The Times* on Saturday last from Mr. Heber Hart, K.C., suggesting some admittedly drastic reforms in the civil procedure of our Courts. These consist of the abolition of the jury system, the concentration of appellate jurisdiction in one Court, a preliminary hearing before a Master by way of a natural development of the hearing of a summons for directions, the fixing (and observing) a date for trial, the "scrapping" of the greater part of our laws of evidence, a limitation of party and party costs, and the development of a "convention" among lawyers, which, the writer of the letter is convinced, "will be dictated by the professional ethics of the near future," that an advocate who thinks his client's case untenable in fact of law, shall either retire or confess how he feels about the case by simply presenting the facts and contentions of his client and then for ever holding his peace. Mr. Heber Hart has had the opportunity, as the British Judicial member of the Mixed Arbitral Tribunals constituted under the Peace Treaties, of framing a new system of procedure and of watching its working for nine years, and his opinion on the working of our existing legal system therefore carries weight.—*L.T.*, 1930, p. 389.

Two of the Proposals.—Of the various reforms suggested by Mr. Heber Hart, the two which will give rise to most controversy, are the abolition of civil juries and the abrogation of the greater part of our law of evidence. With regard to juries, Mr. Hart's suggestion is that a litigant should, except in a small cause, have the right to claim a trial by three judges, but never the right to a trial by jury. As is well known, most decisions in civil actions are at present arrived at without the assistance of a jury. All Chancery actions, most County Court actions, and very many commercial cases are tried by a Judge sitting alone. In cases where facts are technical or very complicated

a jury may not be best qualified to arrive at a decision, but we suggest the average running down action as a typical case in which their aid may be invaluable. Sharp, "thoughtless", extrovert men, used to the street, are often better able to appreciate evidence about street happenings, just as they may sometimes be in such cases more reliable witnesses than thoughtful and intellectual professional men. Much the same may be said of many a divorce case, where events have taken place in a more or less doubtful *milieu*, and of many cases in which real contact with the social class in which the dispute arises sheds illumination on the facts sought to be proved, and suggests which of two stories is the more probable in the circumstances. As regards the Law of Evidence, Mr. Hart is willing to leave standing, *inter alia*, the rules excluding leading questions in examination-in-chief and permitting questions relating to credit in cross-examination, but he would allow a Court, subject to any special order made in a cause, to receive "any materials . . . . which in the opinion of the Court are of probative value as evidence or information" on the questions at issue. He suggests that, as matters now stand, discussions as to the admissibility of evidence consume more time than would be taken in receiving unimportant testimony. Without some experience of the order of things contemplated it is difficult to say whether counsels' efforts to establish probative value, together with the time taken in admitting evidence not now admissible, would not greatly exceed the time said to be wasted under present conditions.—*L.T.*, 1930, p. 389.

The Imperial Conference.—With the publication of the official Summary of Proceedings it becomes possible to estimate something of the constitutional importance of the work of the Inter-Imperial Relations Committee of the Imperial Conference recently dispersed. Viewed from the lawyer's standpoint its proceedings have been, although formal, in fact basic, for a great part of its task has been to confine within the limits of draft legislation which the Home Government is bound to promote the spacious and significant concessions made in 1926. What we are wont to call Parliament is in the Report carefully designated as "the Parliament at Westminster", and "colony" and "possession" will twelve months from now, if all goes according to plan, cease to have any legal significance in relation to the Dominions. This latter term henceforth has a definitely legal and not merely a popular meaning, the exact reverse of that implied by its derivation. The restrictions placed

on Dominion legislation by the Colonial Laws Validity Act will be revoked by the Act embodying the decisions of the Conference, which will contain the following clauses:

(*i*) The Parliament of a Dominion has full power to make laws having extraterritorial operation.

(*ii*) No law....made....by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England or to the provisions of any existing or future Act of Parliament of the United Kingdom........and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act........in so far as the same is part of the law of the Dominion.

(*iii*) No Act of Parliament of the United Kingdom ....shall extend or be deemed to extend to a Dominion as part of the law in force in that Dominion unless it is expressly declared in (the proposed) Act that that Dominion has requested, and consented to, the enactment thereof.

Tradition will be honoured in the name of the measure, which it is suggested should be styled the Statute of Westminster.—*L T.*, 1930, p. 435.

The Crown.—Under the proposed new arrangements the relations between His Majesty as the head of the Commonwealth and the Dominions as members will, however, continue to be real and significant The Governor-General of a Dominion having a new position as "representative of His Majesty only," it is suggested that changes in the method of appointment flow naturally therefrom. The report states, therefore, that the parties interested in his appointment are His Majesty, whose representative he is, and the Dominion concerned; that the constitutional practice applies that His Majesty acts on the advice of responsible ministers, and that such are the Dominion ministers, who tender formal advice after informal consultation with him. The peculiar qualities of our unique constitution are well illustrated in the addition:

The channel of communication between His Majesty and the Government of any Dominion is a matter solely concerning His Majesty and such Government. His Majesty's Government in the United Kingdom have expressed their willingness to continue to act in relation to any of His Majesty's Governments in any manner in which that Government may desire.

In spite, too, of much discussion, no change has been made in the arrangements touching the reference of cases to the

Judicial Committee of His Majesty's Privy Council. Finally, just following a suggested recital to the new statute setting out the legislative independence of the Dominions, comes a recital as to their relations with the Crown which brings home the reality of the issues involved:

> Inasmuch as the Crown is the symbol of the free association of the Members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the Members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.

Contrary to the anticipations of the law press, the conference has—probably wisely—turned its back on any permanent court for the solution of disputes between members, but provides for a voluntary tribunal of five members constituted *ad hoc*.—*L.T.*, 1930, p. 435.

Civil Judicial Statistics.—The leanness of recent years so far as litigation is concerned is illustrated by the decline in the work of the appellate courts recorded in the statistics for 1929. The Court of Appeal touches low-water mark with but 456 appeals, while the House of Lords had 60, again the lowest for many years if we except 1927, when it had 58 cases only on the list. The total proceedings commenced in the High Court in 1929—103,377—shows an all-over increase of 3·6 per cent. This is the result of a slight improvement in the King's Bench, Chancery work having declined 1·2 per cent., in spite of increased activity in Companies (Winding-up) cases, and the Probate, Admirality and Divorce on this occasion remaining practically stationary. In the recent discussion regarding the exercise of discreation in devorce cases comment was made as to the difficulty in securing uniformity of principle caused by the fact that large numbers of divorce cases were now taken at Assizes. In this connection it is interesting to note that, although there was a noticeable decrease in the matrimonial petitions filed at District Registries in 1929, there were still 1376 which came before judges of the King's Bench Division at the Assize towns exercising jurisdiction in divorce—something like one-third of the whole number. It is somewhat surprising that of the divorce cases taken on Assize rather more than half should have been

those of poor persons, and the figures will doubtless be noted as passibly affording some confirmation of the suggestion that in undefended divorce cases the poor persons' procedure is not infrequently abused. The bulk of the proceedings brought by poor persons have, as in former years, been matrimonial, and if proof were needed of the careful scrutiny given to applications, it would be furnished by the fact that 97 per cent. of the suits to which poor persons were parties were successful. County Court proceedings, as the Profession is aware, continue to increase in number, the 1929 figures exceeding those of 1928 by as much as 12,189; on the other hand, appeals therefrom have fallen by 19 per cent. Finally, the large number of appeals to Quarter Sessions from rating authorities and assessment committees entered during the year, namely, 3632, is, as is pointed out, evidence of the disputes which have arisen as a result of the new valuation lists and the special list for de-rating purposes.—*L.T.*, 1930, p. 481.

The Highway Code.—The draft code comprising the directions of the Minister of Transport for the guidance of road users, provided for by section 45, sub-section (1), of the new Act, has been awaited with general interest, and not least so by lawyers. For, although the code is not law, it is enacted that failure to observe its provisions may be relied upon by any party as tending to establish or to negative any liability that may be in question in either civil or criminal proceedings. Its keynote is set in the first paragraph, which lays stress on the duty to the community laid on all road users as responsible citizens not to endanger or impede others in their lawful use of the King's Highway, and it is to be hoped that its nominal price of 1*d.* will secure a practically universal circulation for what is a comprehensive and moderate body of directions. No reference is made to the much argued question of the dimming of headlights, but the unqualified pronouncement under Cross Roads that it is the duty of a driver on a minor road, when approaching a major road, to go dead slow and to give way to traffic on it, will doubtless come to be conclusive in collision cases, although there may occasionallly still be room for argument as to what is a major and what a minor road. The suggestions in the code, while mainly turning on the question of safety, extend also in parts to the inculcation of mere good manners, and it is heartening, for example, to find included under Motor Horns the precept that "they should never be used to express annoyance or impatience." This suggestion, if observed, would

lessen appreciably one of the minor irritations of London life. The code has, under the Act, to receive the approval of both Houses before it is issued, and further comment at this stage would be useless.—*L.T.*, 1930, p. 505.

New Motoring Offences.—The appearance of the Road Code is a remainder that several not uncommon road practices are under the new Act transferred from the realm of things lawful but not expedient to that of things forbidden by law. To mention only a few, it is doubtful whether the average motorist realises that under S. 49, already in force, it is an offence to neglect directions given by a police constable engaged in regulating traffic, or that, under S. 50, it is now an offence to leave a vehicle "in a position or in a condition or in circumstances likely to be dangerous." Another prohibition in operation is that which not only forbids more than one person to ride pillion but also forbids the one pillion-rider to be carried otherwise than sitting astride and on a "proper" seat securely fixed to the cycle (S. 16). Finally, it is an offence under S. 29 of the Act to take hold of a motor vehicle for the purpose of being towed, while joy-riding entails on summary conviction a maximum fine of £50 or not exceeding three months' imprisonment.—*L.T.*, 1930, p. 505.

Capital Punishment.—The Committee on the above subject, whose chairman was the Rev. James Barr, has reported in favour of a five years' experiment in the abolition of the death penalty. Too short a time has elapsed since the appearance of the report for it to be possible in this issue to give any considered opinion on the pronouncements of its authors. The General Summary, however, is certainly unusual for a publication of the kind, and leaves an impression rather of a humanitarian recoil from the taking of life than of a judicial conclusion as to the best means of preserving it. The report certainly does nothing to dispel the lawyer's partiality for a chairman trained in the estimation and formulation of evidence. That the abolition of the death penalty would not seriously inconvenience the administration of the Home Office, while it has relevance, hardly seems a first class argument in its favour. However that may be, the document suffers in the public estimation from the fact that two-fifths of the personnel, including apparently three out of the four lawyer members, saw fit to dissociate themselves altogether from the report.—*L.T.*, 1930, p. 505.

The Acceptance of Gifts by Corporations.—In the litigation between Sir Walter H. Cockerline and the Crown, carried unsuccessfully by the former to the Court of Appeal last week, the main point was whether assessment was a necessary condition precedent to the tax, and that was decided against the appellant. There was argument on another issue, however, namely, whether if by way of settlement of a dispute, certain money was paid to the Crown in respect of tax, and it was discovered afterwards that there was over-payment, receipt of the excess by the Commissioners of Inland Revenue was *ultra vires*, on the doctrine that the Crown cannot accept gifts. It was not necessary to decide this point, but the judges made no secret of their opinion that it was unsound, one pointing out that successive Chancellors of the Exchequer had received "conscience money" for generations without question. No doubt, once the money was handed over, the uneasy penitent would let it remain where it was, else his act of restitution would fail to benefit his soul, not to mention that, if he attempted to recover it, his identity would be made public against his desire. Naturally enough, therefore, the legality of the receipt of conscience money has not been tested. That the Crown is entitled to receive a gift, however, is fully apparent from such authorities as *Nightingale* v. *Goulburn*, (1848) 2 Ph. 594 and *Ashton* v. *Lord Langdale*, (1851) 4 De G. & Sm. 402. In these cases certain bequests were in terms made to the Queen's Chancellor of the Exchequer, and to the Commissioners of the Sinking Fund respectively, but they were, in effect, gifts by testators to the servants of the Crown as such, and so, in effect, to the Crown as a Corporation sole. In *Newlands* v. *A.-G.*, (1809) 3 Mer. 684, a bequest to the Government in exoneration of the National Debt was directed to be transferred to such person as the King, under his sign manual, should appoint. The question whether statutory bodies, whose powers are strictly defined by their Acts, can receive gifts (as distinct from bequests) as an inherent power of every legal entity, does not appear to have been expressly decided. A parish council has express statutory power to accept gifts, *see* Local Government Act, 1894, s. 8 (1) (*b*), which perhaps might afford some argument that such power must be explicitly given, but in *Slater* v. *Burnley Corporation*, (1888), 59 L.T. 636, it was held that a voluntary payment to a waterworks authority was not recoverable. A statutory body is presumably of benefit to the community, otherwise it would not be allowed to exist, and, if the proposition that gifts increase the power of rediating benefit is conceded, it

would no doubt be held that the law authorises them.—*S.J.*, 1930, p. 709.

Once a Highway always a Highway.—The fundamental principle that public rights in a highway, once proved to exist, cannot be released or extinguished except by statute or in a formal and legal manner by an order of the justices under the Highways Acts, has just been strikingly illustrated by the fact, as reported, that a certain rural district council has discovered that it is liable to repair a highway set out in an enclosure award made 117 years ago, and apparently forgotten almost ever since. *Turner* v. *Ringwood Highway Board*, L.R. 9 Eq. 418, is a decision to that effect. And now, according to a recent article in *The Autocar,* 22nd August, it is proposed to reconstruct and make fit for modern traffic a long stretch of one of the old Roman roads—the Ermine Street—in the County of Lincoln, a country which for some reason possesses the somewhat doubtful privilege of being governed by three county councils. Most of the Ermine Street, which leaves London over the Kingsland Road, is a good main road to this day, forming the old, until it joins the Great, North Road. But a short distance south of Grantham, the modern road diverges to the west, and from thence to Lincoln, nearly 30 miles, the Roman road proceeds in a straight line on the map, though some of its course is now and probably has long been grass-grown and abandoned as a highway. The question arises whether it can be said that a Roman road, made centuries before the English common law came into being, is a highway within the principle "Once a Highway always a Highway," which was restated by Swinfen Eady, J., in 1908: *St. Ives Corporation* v. *Wadsworth*, 72 J.P. 73. In legal matters and origins the reign of Richard I is the dawn of history, behind which we are not expected to look. There can be no doubt, however, that the Roman roads lasted, as they were built to last, right through the mediæval period into later times; they were the royal routes, or King's highways, and for a very long time there were no other country roads to speak of, and until the middle of the eighteenth century, no other hard stone-made roads at all. Being highways at common law, therefore, no amount of disuse, enclosure or stopping-up, except under lawful authority, strictly proved to have been exercised, can abrogate the public right to use them, and the County Councils of Lindsey and Kesteven, through whose areas the Ermine Street runs, can proceed to restore it to modern use in spite of the

fact, if it be so, that portions of it have become barely distinguishable from the surrounding fields. Should there be any section, however, to which all public access has been cut off by the destruction or lawful stopping-up of highways leading into it, legal difficulties may arise with the owners of the land through which the track passes: *Bailey* v. *Jameson*, 1 C.P.D. 329. But this appears unlikely. Otherwise it seems to be merely a matter of time and a money grant by the Ministry of Transport in aid of unemployment, which we believe has already been applied for, before the full use of Ermine Street is restored to a busier life than it ever knew before. This is not the only place in the country where a disused, or little used Roman road could, with great advantage to modern traffic conditions, be reconstructed.—*S.J.*, 1930, p. 710.

Relief against Forfeiture where Lessees are Joint Tenants.—The decision in *T. M. Fairclough and Sons, Ltd.* v. *Berliner, The Times*, 16th October, brings into prominence a hardship which will be inflicted when relief against forfeiture of a lease under which two or more persons hold as joint tenants is not sought by all of those persons. In that case, two persons held as joint tenants under a lease of which they had taken an assignment, and in which there were very full repairing covenants. Breaches of these were alleged by the lessor company, and were proved to the satisfaction of the Court. The defence denied the breaches, and sought relief under S. 146 (2) of the Law of Property Act, 1925. One of the two defendants, however, who appeared in person, stated that he did not join in the application for relief; and Maugham, J., took the view that that was sufficient to deprive the court of jurisdiction to grant the application. It was, he said, not accurate to describe either of the two defendants alone as the "lessee". The "lessee" in such a case, was constituted by the joint tenants together; and the elucidation of the word "lessee" in sub-section 5 of S. 146 of the Law of Property Act, 1925, did not warrant the view that relief could be granted if only one of two or more holders under a lease as joint tenants applied for it. Such a course, he said, would be unjust; for it would have the effect of restoring the lease as though there had been no forfeiture, and also of reviving the liability of the lessee or lessees who had not applied for relief to the covenants in the lease. He, therefore, refused the application, and gave the lessor company possession. The decision makes clear that relief will not be granted on the application of only one of two or more joint lessees; but it does not,

as reported, show whether it will be granted if several do apply for it and only one does not. It has apparently yet to be decided, for example, whether, if three out of four lessees who are joint tenants apply for relief and one does not, the application will be granted; if it is not granted, the majority of the lessees will suffer hardship; while, if it is granted, the lessee not asking for it, and possibly, as in the case before Maugham, J., having a perfectly good and honest reason for his attitude, will, as Maugham, J., pointed out, "continue to be liable to the covenants in the lease."—*S.J.*, 1930, p. 710.

The Dog in the Motor Car again.—The decision in *Fardon* v. *Harcourt Rivington* on which we commented in our issue of 12th July (Vol. 74, No. 28, p. 445), was unanimously reversed in the Court of Appeal on Thursday last (30th October). It will be remembered that the defendant was sued for damages for negligence in leaving his car with a dog inside unattended on the publc highway and failing to tie up the dog in a secure manner. The dog which was jumping up and down in the car when the plaintiff passed by, put its paw through the glass panel at the back of the car, causing a splinter of glass to enter the plaintiff's eye. The eye had to be removed. Mr. Justice Talbot left the question of negligence to the jury and the jury found for the plaintiff and awarded £2,000 damages. Lord Justice Scrutton, however, in delivering the judgment of the Court of Appeal, said that in his view there was no evidence that the dog had any special propensity which was dangerous, nor did the owner knew anything of any dangerous propensity. There is an obligation to keep wild animals like gorillas, tigers and monkeys under control, but no obligation to do so with regard to tame animals, such as dogs and cats, which merely exercise their ordinary propensities in jumping about. As the defendant could not, by the exercise of reasonable care, have foreseen an occurrence which had never been known to happen before, the appeal of the defendant was allowed and the verdict of the jury set aside. Motorists may now breathe a sigh of relief and continue to lock up their dogs in cars as before.—*S.J.*, 1930, p. 746.

United States Constitution and Prohibition.—The renewed effort on the part of certain American States to secure the repeal of the prohibition law brings out once again a cardinal point of difference between the constitutional machinery of the United States and that of our own country. The framers of the con-

stitution of the United States took great pains to ensure that their handiwork should not be affected by hasty and ill-considered alterations, and, accordingly they provided that amendments could be effected only if certain preliminary conditions were fulfilled. Article V says that "the Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress." It is thus no easy matter to alter the fundamental laws of the United States. In this country fundamental laws are theoretically as easily altered as any other, seeing that Parliament is supreme in the domain of legislation. There is a good deal to be said in favour of the American plan of forbidding any tampering with the national compact save under exceptional circumstances, and only on compliance with certain conditions. Another point of difference between the constitution of our kin beyond sea and that of England is that it is competent in the United States to question the validity of legislation if it is said to offend against the constitution, and very often the Supreme Court is called upon to pronounce whether a particular Act of Congress is or is not within its competency. In this country the Courts are bound to accept the statutes as of binding force whatever their effect may be.—*S.J.*, 1930, p. 760.

Impatient Jurors.—When the hearing of a case seems in danger of being unduly prolonged, the Judge, on requesting counsel to try to be more brief, has frequently taken up arms on behalf of a patient jury. The members of the jury, he may point out, have probably been called away from important business duties and been compelled to pass many valuable days listening to unnecessarily drawn-out evidence. Whether juries are by nature patient, or whether the forensic atmosphere has a subduing effect upon them, it is, in fact, only very rarely that a complaining voice is raised in Court against what is often a wearying task. To do so must, indeed, require a high degree of moral courage. At the Central Criminal Court recently, when counsel was cross-examining on points of character, one of the jurymen asked "What has it got to do with the case?"

—probably a not unnatural question from one not particularly familiar with the extent to which questions as to credit may go. Sir Ernest Wild, K.C., the Recorder, told him that it was his duty to listen, and he must be patient, an admonition which caused the juryman to expostulate that he had been there three weeks. This, apparently, to put it mildly, was an over-estimation, for on the following morning the Recorder, having caused inquiries to be made into the juror's complaint, said that it appeared that he had, in fact, only been in the jury box, for six days, the sessions only having lasted a fortnight to that date. The juror apologised, and added that if he had caused any annoyance it was not meant. "One of the things we try hardest in this Court to do," replied the Recorder, "is to study the convenience of juries." It certainly must require the patience of Job to listen to intensely dull evidence over perhaps a period of weeks when one's own business affairs are calling for urgent attention, but to serve on a jury is a duty demanded by the State of its citizens, a duty which assists in ensuring a fair deal for litigants in civil actions and for the accused in criminal prosecutions. A juror of to-day may, indeed, be truly thankful to-morrow that he has "twelve good men and true," or may be a woman or two, to decide the merits of his own case. "Just think," said Lord Darling on one occasion to a juror who complained that he was wasting valuable time without receiving remuneration, "how pleased you will be, if ever you have to be tried, to reflect that you are getting a jury for nothing."—*S J.*, 1930, p. 775.

BOOK REVIEWS.

The Law of Insolvency in British India, by Sir D. F. Mulla, *Kt.*, Advocate, High Court, Bombay. Tagore Law Lectures, 1929. Published by James & Co. Available at or sold by N. M. Tripathi & Co., Book-sellers, Bombay. Price Rs. 12.

The Tagore Law Lectures have been the occasion in some cases of the production of the treatises of first-rate importance on some branches of law which have been looked upon as of the highest authority. Among these may be mentioned the classical treatises on the Law of Mortgages by the late Sir Rash Behari Ghose, the Law of Limitation and Prescription by the late Mr. U. N. Mitra and the Law of Marriage and Stridhanam by the late Sir Gurudas Bannerjee. We are glad to find that the services of Sir D. F. Mulla have been secured for the exposition of the

subject of Insolvency Law in India. The subject is one of growing importance and complexity in this country at the present time. We have had the pleasure of going through some portions of the book and find that the learned author has used his great analytical power which is quite familiar to lawyers and Judges in illumining this branch of law. The lucidity of the statement of the law by the learned author and the appropriateness of the authorities cited by him for the propositions enunciated are too well known to need repetition. The learned author's suggestions for the improvement and amendment of the Acts will command the respectful attention of the Legislature. We have every hope that this volume will be a most useful addition to every lawyer's library on a subject of almost daily interest.

THE INDIAN STATES, by Sirdar D. K. Sen, M.A., B.C.L. (Oxon). Published by Messrs. Sweet and Maxwell, Ltd., 1930. Price Rs. 7-8-0.

Mr. Sen's treatise is a vigorous statement of the princes' case and is on the lines in regard to treaty rights of the arguments of Sir Leslie Scott on behalf of the princes before the States Committee. In this respect, Mr. Sen's view of treaty relations is at variance with the report of the Butler Committee and the reasoning underlying the report which has been elaborately set forth and developed in Professor Holdsworth's article in the *Law Quarterly Review* of last year. He is for literal and rigid adherence to the terms of the treaties and is for ignoring all usages and conventions which have grown up in the relations between the Government of India and the States. He takes exception to the Manipur resolution of the Government of India in which it was laid down that the principles of International Law have no bearing on the relations between the Government of India and the States under the suzerainty of the Crown and to the terms of the now famous Lord Reading's letter to His Exalted Highness the Nizam of Hyderabad. Mr. Sen takes up the position that the Government of India has been unjustly interfering with the internal autonomy and sovereignty of the States including fiscal matters by a too elastic and comprehensive interpretation of paramountcy. He holds the view that by no conceivable principle can the position of the paramountcy of the Crown be the source and justification of the jurisdiction attempted to be exercised by the British Government over foreigners within the territorial limits of the Native States. In regard to the question of the relationship of the Crown to the Native

States, Chapter VII of his book is to a large extent a restatement of the arguments of Sir Leslie Scott. While Mr. Sen seems to think that the treaty relations with the Crown do not entail the maintenance of a particular kind of constitution in the United Kingdom, he puts forward the case that the devolution of the rights and responsibilities of the Crown on a British Indian democratic constitution will be inconsistent with the treaty relations of the Crown. The line taken up by Mr. Sen does not fit in with the now well-accepted principle that there is nothing to prevent the Crown from entering into a treaty in the right of a particular territory within the British Empire, and there is no reason why the treaties entered into should not be in the right of the Crown's British Indian territory. There is no satisfactory reason vouchsafed why the Crown in conjunction with the Parliament cannot erect any kind of constitutional machinery for the purpose of tendering advice to the Crown and for enabling the Crown to execute the treaties. To the extent that such a constitutional machinery is erected in India, it will be as much His Majesty's Government as His Majesty's Government in the United Kingdom.

THE ELEMENTS OF CRIMINAL LAW, by Guffar Syed, M.A., LL.B. Price Rs. 2.

This little book deals with the elementary principles of Criminal Law as administered in British India. One feels much profit may not be derived from such a short and inadequate summary of some of the sections of the Indian Penal and Criminal Procedure Codes, though we are not slow to agree with the author that this may suffice to be of some guidance to such of the citizens that are quite unacquainted with the law but yet who may be called upon to serve the State as Honorary Magistrates.

We wish to add that greater care and execution could have made the volume more attractive.—*K.C.*

TRIPATHI'S LAWYER'S DIARY, 1931. Price Rs. 2.

This fine diary contains, apart from the usual attractions of a diary of this kind, a few important sections of the Civil Procedure Code as well as Court Fees Act, etc. This diary gives a page for each day and is excellently got up. We have no hesitation in recommending this to the members of the Bar. —*K.C.*

THE INDIAN SALE OF GOODS ACT OF 1930, by N. N. Sahni, B.A., LL.B., Advocate, Lahore High Court, 1930. Published by Punjab Law Reporter Office, Lahore. Price Rs. 2-8-0.

The enactment of the Sale of Goods Act has brought forth a number of annotations on the Act by various authors; the book under review is one of them. The author has given the notes under each one of the sections with reference to the language of the sections and the decisions under the corresponding provisions. He has also drawn attention to the provisions of the Indian Contract Act corresponding to the sections of the new Act and the differences between the two enactments. The case-law has been brought up to date. A few forms are also given in the end by way of an appendix. We hope that the book will be found useful by those having occasion to use it.

THE LAW OF EQUITABLE MORTGAGES IN INDIA, by Narotam Singh Bindra, B.A. (Hons.), LL.B., Advocate. Published by Students' Popular Depot, Lahore. Price Rs. 2.

The learned author has in the course of 60 pages in this small book dealt with the incidents of what are perhaps loosely called equitable mortgages in this country but which are really legal mortgages though effected by the deposit of title deeds. That such mortgages do not really partake of the characteristics of equitable mortgages strictly so called in England, was clearly pointed out by the Privy Council in *Imperial Bank of India v. U. Rai Gyaw Thu & Co., Ltd.*, (1923) I. L. R. 51 Cal. 86. Excepting the mode of its creation a mortgage by deposit of title deeds in this country has all the legal consequences of the other kinds of mortgages. As to what documents of title have to be deposited to create a mortgage, the English cases may have some bearing. The learned author has dealt with the questions that commonly arise in this class of mortgages; he has also given some forms to accompany the deposit of title deeds. The latter portion of the book is taken up by the reproduction of the whole of the Transfer of Property Act though the whole of it does not really bear upon the subject. A list of cases referred to in the book towards the beginning or the end of it would have been of great use.